UNITED STATES PATENT AND TRADEMARK OFFICE

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 June 2009*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-10,12-18,20-26,28-33,39 and 40* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-10,12-18,20-26,28-33,39 and 40* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/09/09

has been entered.

Status of Claims

2.   Claims 1, 3-10, 12-18, 20-26 and 28-33 are amended. Claims 2, 11, 19, 27 and

34-38 are canceled. Claims 39-40 are new. **Claims 1, 3-10, 12-18, 20-26, 28-33 and**

39-40 are pending.

Response to Arguments

3.   Applicant's arguments filed June 9, 2009 have been fully considered but they are

not persuasive.

        Applicant argues (pg. 11) "Claim 1 recites several features of an "order priority."

"Order priority" is a term of art that is incompatible with Konia's "priority" in several

respects."

        In Response: The Examiner respectfully disagrees with Applicant's assertion

regarding incompatibility.

        The term "order" in trading systems is another way of indicating a bid or offer

exists for a particular item that is being traded, such as financial instruments or any

goods/services. Konia teaches a method that automatically and dynamically prioritizes

bids/orders relative to the value of related bids/orders (Abstract and ¶0011).

Applicant submitted an Affidavit on 3/9/2009 which solely contained Exhibit A –

Barron's Dictionary of Finance and Investment Terms, which recites:

> PRIORITY system used in an AUCTION MARKET, in which the first bid or offer price is executed
> before other bid and offer prices, even if subsequent orders are larger.

An examination of the Peterffy reference reveals a method used in an electronic

trading system, in which orders are matched on a strict price and time priority algorithm

(¶0011). The orders are received and placed in an electronic Central Order Book, which

has been interpreted as being similar to a stack or a queue, in which a priority is

maintained between the received orders (prior to the orders being executed) based on

time, price, etc. The examination of Konia reveals a method for prioritizing bids/orders

in an auction market (Abstract and ¶0011). Therefore, it was know in the art at the time

of Applicant's invention that bids/orders could be automatically and dynamically

prioritized based on price, relative to the price of related bids/orders, prior to execution.

The Examiner maintains that the combination of Peterffy and Konia disclose,

teach, and suggest applicant's inventive concept.

Also, to support the rejection based on the combination of Peterffy and Konia, the

Examiner employed the decision of The Supreme Court in KSR International Co. v.

Teleflex Inc., 550 U.S., 82 USPQ2d 1385, 1395-97 (2007) which identified a number of

rationales to support a conclusion of obviousness which are consistent with the proper

"functional approach" to the determination of obviousness as laid down in Graham. The

key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the

reason(s) why the claimed invention would have been obvious. The Supreme Court in

KSR noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made

explicit.

To reject a claim based on this rationale, Office personnel must resolve the

Graham factual inquiries. Then, Office personnel must articulate the following:

(1)   a finding that the prior art included each element claimed, although not

necessarily in a single prior art reference, with the only difference between the claimed

invention and the prior art being the lack of actual combination of the elements in a

single prior art reference; **>>>   Examiner has established.**

(2)   a finding that one of ordinary skill in the art could have combined the

elements as claimed by known methods, and that in combination, each element merely

performs the same function as it does separately; **>>>   Examiner has established.**

(3)   a finding that one of ordinary skill in the art would have recognized that the

results of the combination were predictable; and **>>>   Examiner has established.**

The known work in the field of auctions (e.g. managing incoming bids/offers and

maintaining priorities of said bids/offers) could have prompted variations of it for use in

either the same field or a different one based on design incentives or other market

forces, and the variations would have been predictable to one of ordinary skill in the art.

See MPEP 2143 (Rev. 6, Sept. 2007), Rational (F).

Claim Objections

4.	**Claims 4 and 20** were previously objected to in the Office Action filed

12/09/2009 for minor informalities. In view of Applicant's amendments, the objections

have been withdrawn.

5.	**Claims 1 and 18** are objected to because of the following informalities: In the

third limitation the word "matched" is speller as "matchied". Appropriate correction is

required.

Claim Rejections - 35 USC § 101

6.	35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
> matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

7.	**Claims 1, 3-10 and 12-17** are rejected under 35 U.S.C. 101 because the claimed

invention is directed to non-statutory subject matter.

Claim 1 recites a process comprising the steps of receiving and executing.

Based on Supreme Court precedent, a proper process must be (1) tied to another

statutory class (such as a particular apparatus) or (2) transform underlying subject

matter (such as an article or materials) to a different state or thing (*Diamond v. Diehr,*

450 U.S. 175, 184 (1981); *Parker* v. *Flook,* 437 U.S. 584, 588 n.9 (1978); *Gottschalk v.*

Benson, 409 U.S. *63,* 70 (1972); *Cochrane* v. *Deener,* 94 U.S. 780,787-88 (1876)).

Since neither of these requirements is met by the claim, the method is not considered a

patent eligible process under 35 U.S.C. 101. To qualify as a statutory process, the

claim should (1) positively recite (within the body of the claim) the other statutory class

to which it is tied, for example by identifying the apparatus that accomplishes the

significant steps of the process or (2) positively recite the physical subject matter that is

being transformed from one state to another. Appropriate correction is required.

Claims 3-10 and 12-17 are rejected to because of their dependency on claim 1.

Note: The first limitation, reciting an electronic trading system, has been interpreted as

not performing any steps of the process claim. And as stated above, a process claim

should (1) positively recite (within the body of the claim) the other statutory class to

which it is tied, such as by positively reciting the apparatus performing the significant

step(s).

Claim Rejections - 35 USC § 103

8.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

9.   The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1.   Determining the scope and contents of the prior art.
2.   Ascertaining the differences between the prior art and the claims at issue.
3.   Resolving the level of ordinary skill in the pertinent art.
4.   Considering objective evidence present in the application indicating
         obviousness or nonobviousness.

10.   **Claims 1, 3-10, 12-13, 15-18, 20-26, 28-29 and 31-33** are rejected under 35

U.S.C. 103(a) as being unpatentable over Peterffy et. al., Pub. No. 2004/0254804

(hereinafter Peterffy) in view of Konia, Pat. No. 7,225,151 (hereinafter Konia).

     As to claim 18, Peterffy discloses an electronic trading system for the exchange

of financial instruments, said system comprising at least one processor (¶0071), the

processor or processors of the system being configured to:

- receive and store orders to buy and to sell financial instruments as
  submitted by traders, and substantially as orders are received, to execute
  trades between matching buy and sell orders, the stored buy and sell
  orders having priority orderings relative to each other reflecting at least
  one attribute of the order in addition to or instead of price, the priority
  ordering used by the electronic trading system to determine priority among
  orders for matching for execution (Abstract and ¶0011; via electronic
  Central Order Book; and all orders are matched on a strict price and time
  priority algorithm);

- receive a dynamic price improvement order, being an order to buy or sell
  an identified a financial instrument traded on the electronic trading system,
  whose priority for execution against contraorders is maintained by the
  trading system at least in part relative to earlier-submitted orders on the
  same side of the market (Abstract and ¶0011; via electronic Central Order
  Book; and all orders are matched on a strict price and time priority
  algorithm);

- receive orders contra to the dynamic price improvement order, and match
  the contra order to the stored orders on the same side of the market as
  the dynamic price improvement order substantially as the contra orders

are received, the dynamic price improvement order being matchied to the

contra orders with the priority relative to other orders as maintained by the

electronic trading system (Abstract and ¶0011; via electronic Central

Order Book; and all orders are matched on a strict price and time priority

algorithm), and

- execute transactions substantially as orders and contra orders are

  matched (Abstract, ¶0011 and ¶0026-0042); via electronic Central Order

  Book; and all orders are matched on a strict price and time priority

  algorithm).

Peterffy does not disclose the following:

- adjusting a price associated with the dynamic price improvement order.

As interpreted (in terms of the Peterffy reference), a price for a bid or offer within

an electronic Central Order Book (i.e. a queue, a stack, etc.) will be automatically

adjusted to maintain a priority position of said bid or offer within the order book.

Konia teaches a method for automatically managing an auction for determining

relative priority for a service in a system wherein priority is based on the relative value of

related bids is disclosed. The method comprises **checking for whether a first bid**

exceeds a second bid in an auction **for determining continuing priority** for providing

an ongoing service for at least a first and second bidder, wherein **the relative priority**

for providing the service for the first bidder **is dependent on whether the value of the**

first bid exceeds the value of the second bid, and wherein the relative priority for

providing the service for the second bidder is dependent on whether the value of the

second bid exceeds the value of the first bid. The method further comprises

incrementing the first bid to a value exceeding the second bid if the first bid does

not exceed the second bid, **thereby causing the relative priority for providing**

service for the first bidder to exceed the priority for providing service for the

second bidder. The steps of checking and incrementing may be executed a plurality of

times (i.e. bids are dynamically adjusted; see Abstract and col. 12, lines 2-5).

Peterffy discloses a price improvement processor to effectuate more rapid

matching of bids and offers of financial instruments by conducting a rapid automated

auction in which certain market participants may provide price improvement in

increments that are finer than the prevailing standard minimum price variation and are

provided a certain allocation as an incentive for such price improvements (Abstract).

Peterffy also discloses that the orders (i.e. bids) orders from all types of market

participants may interact directly with each other on a price/time priority basis (¶0008).

Peterffy also discloses that the orders are held in a Book (i.e. stack, queue etc).

Konia teaches a method for managing the priority of bids that have been

submitted by buyers within in auction. Konia teaches that bidders can enter bids with

maximum and minimum and that the online bid management system would keep track

of the bids. Konia teaches that the system would increment (i.e. adjust) the lower bids

until they reach their desired bidding position (e.g. position in a stack), while ensuring

that the bids do not exceed their maximum values (col. 5, lines 50-67). Konia also

discloses that the bidders and their bids can be replaced with buyers and their orders

placed for products or services (col. 11, lines 19-45).

The inventive concept taught by Konia comprises: (1) a method for managing the priority position of bids/orders (e.g. dynamic price improvement order) that have been submitted with minimum and maximum amounts (i.e. price improvements), (2) a method for adjusting the bids/orders dynamically to maintain the position, while staying within the range set by the minimum and maximum amounts (i.e. dynamic price improvement indicators) and (3) maintaining said position until order ends.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the price improvement method for electronic trading of financial instruments (which matched orders on a strict price and time priority algorithm) as disclosed by Peterffy, with the method for automatically adjusting bids/orders according to rules defined by its user (col. 1, lines 27-29) as taught by Konia, since the claimed invention is simply a substitution of one known element for another (i.e. algorithm that adjust pricing of bids dynamically), and one of ordinary skill in that art would have recognized that the results of the substitution were predictable. See MPEP 2143 (Rev. 6, Sept. 2007). Rational (B).

In addition, the known work in the field of auctions (e.g. managing incoming bids/offers and maintaining priorities of said bids/offers) could have prompted variations of it for use in either the same field or a different one based on design incentives or other market forces, and the variations would have been predictable to one of ordinary skill in the art. See MPEP 2143 (Rev. 6, Sept. 2007), Rational (F).

As to claim 1, Peterffy discloses a method for operating an electronic trading system for the exchange of financial instruments, the method comprising the steps of:

- in an electronic trading system **designed to receive and store orders** to buy and to sell financial instruments as submitted by traders, and substantially as orders are received, **to execute trades** between matching buy and sell orders, stored buy and sell orders having priority orderings relative to each other reflecting at least one attribute of the order in addition to or instead of price, the priority ordering used by the electronic trading system **to determine priority among orders** for matching for execution:

Peterffy explicitly discloses electronic trading system for the exchange of financial instruments, the trading system designed to receive and store orders, to execute trades and to determine priority among orders (¶0002 and ¶0021-0023).

Examiner notes that the fact that the system is designed to perform the specific functions does not mean that they are actually performing the functions as recited in the claims. The functions recited in the claim are <u>not positive limitations</u> but only requires the elements to be able to perform the functions. A recitation of the <u>intended use</u> of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See MPEP 2114 and *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

The remaining limitations of claim 1 are substantially equivalent to the limitations of claim 18, and are therefore rejected on the same grounds.

As to claims 3-4, 10, 20-21 and 26, Peterffy does not disclose the following limitations:

- the change includes an increase in the price of the dynamic price improvement order (i.e. a bid or offer in which the submitter would like to have a price priority);

- in which the change includes a decrease in the price of the dynamic price improvement order (i.e. a bid or offer in which the submitter would like to have a price priority);

- wherein determining includes determining the price improvement level such that it is one level higher than the next best order in an order stack, wherein the price improvement level can be adjusted up to a maximum price improvement level.

- wherein the processor is further operable to adjust the price of the dynamic price improvement order (i.e. a bid or offer in which the submitter would like to have a price priority) to one level more improved than the next best order in an order stack, wherein the price improvement level can be adjusted up to a maximum price improvement level.

However, Konia teaches a method and system for automatically managing an auction for determining relative priority for a service in a system wherein priority is based on the relative value of related bids is disclosed. Konia teaches that the system

can perform checks for whether a vendor's bid/order is lower than all other bids/orders

in an auction (e.g. trading system). The vendor is allowed to choose a desired position

and the system can determine the maximum that the vendor's bid need to be in order to

obtain the priority position (e.g. position in a stack). If the system finds that the vendor

has achieved the desired position with respect to the buyer server being processed, the

system may increase the bid to a maximum which allows the bidder to keep the desired

priority. Otherwise, the system decreases the bid without lowering the bid below the

minimum bid entered by the vendor (Abstract and col. 10, lines 53-67).

The concept/method taught by Konia comprises: (1) a method for managing the

priority position of bids/orders (e.g. dynamic price improvement order) that have been

submitted with minimum and maximum amounts (i.e. price improvements), (2) a method

for adjusting the bids/orders dynamically to maintain the position, while staying within

the range set by the minimum and maximum amounts (i.e. dynamic price improvement

indicators) and (3) maintaining said position until order ends.

Therefore, it would have been obvious to one of ordinary skill in the art at the

time of Applicant's invention to include the aforementioned method as taught by Konia

within Peterffy for the motivation of having a system that monitors the current rankings

in auctions (e.g. trading systems) and automatically adjusts its bids/orders according to

rules defined by its user (col. 1, lines 27-29). In addition, it would have been obvious to

one of ordinary skill in the art at the time of Applicant's invention to include in the trading

network of Peterffy, the above mentioned elements as taught by Konia, since the

claimed invention is merely a combination of old elements, and in the combination each

element merely would have performed the same function as it did separately, and one

of ordinary skill in that art would have recognized that the results of the combination

were predictable. See MPEP 2143 (Rev. 6, Sept. 2007).

As to claims 5-9, Peterffy discloses the following elements:

- in which the priority dynamic price improvement order is a position at a

  front of a trading stack (i.e. top of the book; ¶0040);

- maintaining priority of the dynamic price improvement order relative to

  other orders based a timestamp assigned to the dynamic price

  improvement order (¶0025 and ¶0071);

- maintaining the priority based on said timestamp (¶0008 and ¶0011; via

  price/time priority);

- wherein in the event two or more said dynamic price improvement orders

  are received, the orders with older timestamps are matched prior to orders

  with newer timestamps (¶0042); and

- the electronic trading system reveals orders to users at a fixed price

  increment, and the price increment at which the price of the dynamic price

  improvement order is adjusted is a fraction of the revealed price increment

  (¶0024, ¶0047, ¶0052, ¶0054 and Figs. 4 and 4A).

The limitations of claims 22-25 are equivalent to the limitations of claims 5-9,

and are therefore rejected on the same grounds.

As to claims 12 and 28, Peterffy discloses the following limitations:

- determining the price improvement level of a best order in an order stack
  (¶0053); and

- assigning a price improvement level to said price improvement order that
  improves the price of said dynamic price improvement order by one price
  improvement level when the price improvement level of said best order is
  not a maximum price improvement level (¶0053).

As to claims 13 and 29, Peterffy discloses the following element:

- assigning said maximum price improvement level to said dynamic price
  improvement order when the price improvement level of said best order is
  at said maximum price improvement level (¶0024, ¶0047 and ¶0073-
  0087).

As to claims 15 and 33, Peterffy discloses the following element:

- providing to traders of the electronic trading system the option to select
  dynamic price improvement as one of several price improvement order
  types available for submission to said electronic trading system (i.e.
  several types of order types can be submitted to the trading host, including
  orders submitted for price improvement; ¶0026-0035 and ¶0046).

As to claims 16-17 and 31-32, Peterffy does not disclose the following element:

- decreasing the price improvement level of the at least one order on the
  same side of the market as the dynamic price improvement (i.e. a bid or
  offer in which the submitter would like to have a price priority) order such

that the price improvement level of the at least one same-market-side

order does not exceed the price improvement level assigned to the

dynamic price improvement order; and

- wherein the price improvement level of the at least one second order is

  decreased to a price improvement level one level below a maximum price

  improvement level when the at least one price improved order is assigned

  a maximum price improvement level as its price improvement level.

However, Konia teaches a method and system for automatically managing an

auction for determining relative priority for a service in a system wherein priority is

based on the relative value of related bids is disclosed. Konia teaches that the system

can perform checks for whether a vendor's bid/order is lower than all other bids/orders

in an auction (e.g. trading system). The vendor is allowed to choose a desired position

and the system can determine the maximum that the vendor's bid need to be in order to

obtain the priority position (e.g. position in a stack). If the system finds that the vendor

has achieved the desired position with respect to the buyer server being processed, the

system may increase the bid to a maximum which allows the bidder to keep the desired

priority. Otherwise, the system decreases the bid without lowering the bid below the

minimum bid entered by the vendor (Abstract and col. 10, lines 53-67).

The concept/method taught by Konia comprises: (1) a method for managing the

priority position of bids/orders (e.g. dynamic price improvement order) that have been

submitted with minimum and maximum amounts (i.e. price improvements), (2) a method

for adjusting the bids/orders dynamically to maintain the position, while staying within

the range set by the minimum and maximum amounts (i.e. dynamic price improvement

indicators) and (3) maintaining said position until order ends.

Therefore, it would have been obvious to one of ordinary skill in the art at the

time of Applicant's invention to include the aforementioned method as taught by Konia

within Peterffy for the motivation of having a system that monitors the current rankings

in auctions (e.g. trading systems) and automatically adjusts its bids/orders according to

rules defined by its user (col. 1, lines 27-29). In addition, it would have been obvious to

one of ordinary skill in the art at the time of Applicant's invention to include in the trading

network of Peterffy, the above mentioned elements as taught by Konia, since the

claimed invention is merely a combination of old elements, and in the combination each

element merely would have performed the same function as it did separately, and one

of ordinary skill in that art would have recognized that the results of the combination

were predictable. See MPEP 2143 (Rev. 6, Sept. 2007).

11.   **Claims 14 and 30** are rejected under 35 U.S.C. 103(a) as being unpatentable

over Peterffy and Konia as applied to claims 1 and 18 above, and further in view of

Serkin et al., Pat. No. 7,209,896 (hereinafter Serkin).

As to claims 14 and 30, neither Peterffy nor Konia discloses or teaches the

following limitation:

- wherein said dynamic price improvement order is the default order type for
  designated traders that use a trading interface to submit orders to the
  electronic trading system (i.e. the system provides the ability to set a
  default order type).

However, Serkin teaches a system for handling quotes in an electronic market, said system being capable of processing price improvement orders (Abstract and col. 10, lines 46-51). Serkin also teaches that the system uses a "point-and-click" window-type technology that provides a "default" order feature. Both Peterffy and Serkin disclose and teach system for handling quotes which may contain various types of orders. Therefore, it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include in the trading network of Peterffy, the ability to set a default order type as taught by Serkin, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in that art would have recognized that the results of the combination were predictable. See MPEP 2143 (Rev. 6, Sept. 2007).

12.   **Claims 39 and 40** are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterffy and Konia as applied to claims 1 and 18 above, and further in view of Fraser et al., Pat. No. 5,905,974 (hereinafter Fraser).

As to claims 39 and 40, neither Peterffy nor Konia discloses or teaches the following limitations; however, these limitations are taught by Fraser:

- a contra order matched to the dynamic price improvement order for execution is a lift or take of a standing offer (col.7, lines13-22, col.9, lines40-51, col.11, lines 10-25 and col.12, lines 31-49); and

- a contra order matched to the dynamic price improvement order for

    execution is a hit of a standing bid (col.7, lines13-22, col.9, lines40-51,

    col.11, lines 10-25 and col.12, lines 31-49).

It would have been obvious to one of ordinary skill in the art at the time of

Applicant's invention to include the aforementioned limitation as taught by Fraser within

Peterffy for the motivation to provide customized trading tools for trading customers

(col.4, lines 1-53).

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to GREGORY JOHNSON whose telephone number is

(571)272-2025. The examiner can normally be reached on Monday - Friday, 8:30AM -

5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, ALEXANDER KALINOWSKI can be reached on (571) 272-6771. The fax

phone number for the organization where this application or proceeding is assigned is

571-273-8300.

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